

AMA Guides-A Judicial Perspective

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I. Introduction

The *Guides to the Evaluation of Permanent Impairment* (hereinafter called the *AMA Guides or Guides*), had its genesis in a series of articles published in the Journal of the American Medical Association (JAM) between 1958 and 1970. Those articles were published under the auspices of an *ad hoc* committee on Medical Rating of Physical Impairment created by the American Medical Association (AMA). The articles dealt with different organ systems and sought to provide estimates of impairment based on medical standards.¹

In 1971, the AMA reviewed the Committee's efforts and published the 13 separate articles in a single volume, *Guides, First Edition*. After a review by the AMA's Council on Scientific Affairs, a second edition of the *Guides* was published in 1984. Only four years later the third edition of the *Guides* was published. The current edition of the *Guides* was published in June 1993. Work on a Fifth Edition is under way.

The *Guides* attempt to provide a "standard framework and method of analysis through which physicians can evaluate, report on, and communicate information about the impairments of any human organ system."² It is interesting to note that the impairment ratings are not the result of any controlled study of individuals who have been injured. Rather, according to the Fourth

Edition, the Guides use "up-to-date information on impairment and illness provided by knowledgeable clinicians and scholars."³

Compared to the First Edition, the Fourth Edition of the *Guides* is both more detailed and more complicated. The Fourth Edition, including indexes, is 339 pages. The First Edition was 164 pages. The musculoskeletal system of the Fourth Edition comprises some 126 pages. By contrast, the musculoskeletal of the First Edition was only 48 pages.

In 1971, no state required the use of the *Guides* in the determination of impairment. Today, more than 40 states require the use of the *Guides* in whole or in part either through statute, regulation, or as a matter of policy.

The determination of disability, either permanent total or permanent partial, constitutes a substantial portion of the total volume of Workers' Compensation adjudication. Because impairment is often the central component in determining disability, and because the *Guides* have such widespread usage, the application and use of the *Guides* is far more significant today than a few years ago. For those same reasons the *Guides* are more likely today to be subjected to scrutiny in the adjudication process, either administrative or judicial, than ten years ago.

Because the vast majority of Workers' Compensation litigation, from an impairment standpoint, involves the musculoskeletal system, the discussion herein will focus on that system.

II. The Guides and Adjudication

The *Guides* have been advocated by the medical community and others as a standard framework and method of analysis for reporting on impairment. These advocates and the bodies

that adopt the *Guides* invariably argue that their use will inevitably lead to greater consistency and predictability in the determination of impairment. This adjudicator agrees.

The *Guides* provides a standardized framework and methodology in reporting on impairment. In those jurisdictions which mandate its use, the medical community, the legal community, the claimant community, the employee community and the adjudicatory community all look to the same source for common terms, context, and methodology to determine impairment. Since participants have a common source, greater consistency and predictability will follow. Indeed, from the standpoint of consistency and predictability, the *Guides* are a great improvement over any currently available alternative.

Certainly, the use of the *Guides* provides greater consistency and predictability than no standardized framework. Previously each physician, some without experience, provided his medical opinion of impairment. The results varied widely using relevant and irrelevant factors. Some opinions were conclusory, containing no supporting factual findings or incorrect findings. The largely perjorative phrase "dueling docs" arose out of the problems with medical reports of this type. Even though physicians and others in the medical community continue to disagree concerning impairment, the boundaries of the disagreement have become more circumscribed with the wider use of the *Guides*.

While the *Guides* have clearly brought greater consistency and predictability to Workers' Compensation adjudication, we must at the same time make certain that we do not, on the altar of consistency and predictability, overlook and ignore critical legal issues.

Any discussion about the *Guides* from a judicial perspective is complicated by the fact

that the legal status of the *Guides* in the various jurisdictions is different. For example, in some states the use of the *Guides* has been required by legislative action. Some statutes require the use of a specific edition of the *Guides* while other statutes simply refer to the most current edition of the *Guides* and case law determines the applicability of a particular edition. Some statutes adopt the *Guides* in their entirety while other adopt portions of the *Guides*. In other states, the *Guides* is not legislatively mandated but have been implemented through regulation. As with legislative enactments, regulatory promulgations may require use of the *Guides* in their entirety or only certain portions of the *Guides* may be mandated. However, some jurisdictions utilize the *Guides* from a policy standpoint. That is, administrators by policy use the *Guides* but do not require it as a matter of regulation. In other jurisdictions the *Guides* is not mandated either legislatively, as a matter of regulation or policy, but are used by physicians as a matter of comfort and convenience.

From the judicial perspective, the legal status of the *Guides* is crucial to the decision-making process. For example, the issues surrounding the use and application of the *Guides* is very different where they are legislatively mandated as opposed to where the *Guides* is mandated by regulation. A case which arose in my own state illustrates the point.

Prior to the publication of the Fourth Edition, the *Guides* had for more than 20 years utilized the same methodology for the determination of impairment in musculoskeletal cases. That methodology is the range of motion model (ROM). While the ROM has its critics, it has for many years provided a reasonably consistent method for determining musculoskeletal impairment. The Fourth Edition of the *Guides* continued the ROM for injuries of the upper and

lower extremities. However, for injuries relating to the spine, the Fourth Edition mandated the use of a new rating model - the Diagnosis Related Estimate Model (DRE). The DRE differs from the ROM in several important respects.⁴

In West Virginia, the Fourth Edition has been adopted by administrative regulation.⁵ In a case involving a spinal injury, the DRE was challenged on the grounds that it was contrary to the state statute. In an unpublished administrative decision⁶ (copy attached hereto) the DRE was found to be contrary to the West Virginia statute. If the legal status of the *Guides* in West Virginia had been statutory, the analysis would have been different and the result may have been different as well.

The point is three fold. First, the legal status of the *Guides* in any jurisdiction will obviously affect the analysis and outcome of any legal analysis. Second, the *Guides* are medical and scientific in nature, not legal. The *Guides* may in some section appear to be more legal than medical and in those sections more significant review will likely occur. For example, the DRE, excludes from consideration so-called developmental aspects such as osteoarthritis or herniated disc without radiculopathy. The apparent basis for doing so is an assertion that a significant portion of the population developed such conditions by age 35.⁷ It may well be that many individuals develop such conditions irrespective of the nature of their employment, but it is also true that many jobs can cause or aggravate such conditions.⁸

The determination of causation is historically an adjudicatory function which may involve the consideration of many factors in addition to medical evaluations. For the *Guides* to retain their stature as medically and scientifically based, the authors should be cautious about

intruding into non-medical arena of causation. Third, the *Guides* are not designed to fit into any particular statutory construct. While there are common threads in Workers' Compensation statutes, there are also significant differences. Counsel should examine the *Guides* to make certain that not only the methodology of the *Guides* is appropriate in their jurisdiction, but also that the underlying concepts upon which the rating structures are set are also consistent with state laws.

As noted above, the *Guides* have become both more lengthy and more complicated. From a judicial perspective this evolution has good points and minuses. Because the *Guides* have become more thorough, there are more criteria available to evaluate the medical reports offered into evidence as well as the impairment recommendations contained in those reports. At the same time the enhanced thoroughness has made the evaluation of the reports more labor intensive. Simply put, the adjudicatory process takes more time and thus requires more adjudicatory resources.

For example, the *Guides* contain general measurement principles that should be applied to every ROM based report. Applying those general principles will lead to greater consistency and predictability and at the same time place more workable boundaries on the comparison of competing medical reports.

III. Conclusion

One of the stated purpose of the *Guides* is to help provide greater consistency and predictability in the determination of impairment. Based on the experience to date in West

Virginia, the *Guides* have brought more structure to the evaluation process. Ultimately, greater structure should lead to greater consistency. Getting there will require the well-intentional efforts of both medical and legal professionals. Even where there is disagreement concerning the *Guides* or the concepts embodied in them, constructive debate will result in continued improvement in the *Guides*.

Footnotes

1. Guides to the Evaluation of Permanent Impairment, Third Edition, pp. XIX-XXI, 1988.
2. Guides to the Evaluation of Permanent Impairment, Fourth Edition, Page 1, 1993.
3. Ibid.
4. Cottrell v. WCD, Claim No. 92-66811, August 22, 1997.
5. 85 CSR Series 16.
6. Cottrell, supra.
7. Fourth Edition, supra, pp. 99-100.
8. "Musculoskeletal Disorders and Workplace Factors," NIOSH, U.S. Dept. Of Health and Human Services, July, 1997.